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Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

In re:

THE LITIGATION PRACTICE
GROUP P.C.,

Debtor.

Case No. 8:23-bk-10571-SC

Chapter 11

Adv. Proc. No. _____

COMPLAINT FOR:

RICHARD A. MARSHACK,
Chapter 11 Trustee,

Plaintiff,

v.

NEW HORIZON FINANCE LLC,

Defendant.

**(1) AVOIDANCE, RECOVERY, AND
PRESERVATION OF 2-YEAR
ACTUAL FRAUDULENT
TRANSFERS;**

**(2) AVOIDANCE, RECOVERY, AND
PRESERVATION OF 2-YEAR
CONSTRUCTIVE FRAUDULENT
TRANSFERS;**

**(3) AVOIDANCE, RECOVERY, AND
PRESERVATION OF 4-YEAR
ACTUAL FRAUDULENT
TRANSFERS;**

**(4) AVOIDANCE, RECOVERY, AND
PRESERVATION OF 4-YEAR
CONSTRUCTIVE FRAUDULENT
TRANSFERS;**

(5) AVOIDANCE, RECOVERY AND PRESERVATION OF PREFERENTIAL TRANSFER MADE WITHIN NINETY DAYS OF THE PETITION DATE; AND

(6) TURNOVER

Date: [To Be Set]

Time: [To Be Set]

Place: Courtroom 5C

411 West Fourth Street

Santa Ana, California 92701

Judge: Hon. Scott C. Clarkson

For his *Complaint for (1) Avoidance, Recovery, and Preservation of 2-Year Actual Fraudulent Transfers; (2) Avoidance, Recovery, and Preservation of 2-Year Constructive Fraudulent Transfers; (3) Avoidance, Recovery, and Preservation of 4-Year Actual Fraudulent Transfers; (4) Avoidance, Recovery, and Preservation of 4-Year Constructive Fraudulent Transfers; (5) Avoidance, Recovery, and Preservation of Preferential Transfer; and (6) Turnover* (the “Complaint”), plaintiff Richard A. Marshack, the Chapter 11 Trustee (the “Trustee” or “Plaintiff”) for the bankruptcy estate (the “Estate”) of debtor The Litigation Practice Group P.C. (“Debtor” or “LPG”) in the above-captioned bankruptcy case (the “Bankruptcy Case”), alleges and avers as follows:

STATEMENT OF JURISDICTION, NATURE OF PROCEEDING, AND
VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157(b)(2)(A), (E), (H) and (O), 1334(b), and General Order No. 13-05 of the District Court for the Central District of California because this is a core proceeding arising in and/or related to the Bankruptcy Case, which is a case under Chapter 11 of Title

1 11 of the United States Code (the “Bankruptcy Code”), and which is pending in the
2 United States Bankruptcy Court for the Central District of California, Santa Ana
3 Division (the “Bankruptcy Court”).

4 2. Regardless of whether this proceeding is core, non-core, or otherwise,
5 Plaintiff consents to the entry of a final order and judgment by the Bankruptcy Court.

6 3. Defendant is hereby notified that Rule 7008 of the Federal Rules of
7 Bankruptcy Procedure requires defendant to plead whether consent is given to the
8 entry of a final order and judgment by the Bankruptcy Court.

9 4. Venue of this adversary proceeding properly lies in this judicial district
10 pursuant to 28 U.S.C. § 1409(a) because this proceeding is related to Debtor’s pending
11 Bankruptcy Case.

12 **THE PARTIES**

13 5. Plaintiff Richard A. Marshack is the duly appointed, qualified, and acting
14 Chapter 11 Trustee of Debtor’s Estate.

15 6. Debtor is, and at all material times was, a professional corporation
16 organized, existing, and in good standing under the laws of the State of California,
17 with its principal place of business in Tustin, California.

18 7. Defendant New Horizon Finance LLC (“Defendant”) is, and at all
19 material times represented that it was, a foreign limited liability company, existing,
20 and under the laws of the State of Delaware.

21 8. Defendant may be served via certified mail upon an officer, managing or
22 general agent at 8101 Biscayne Blvd., # 506, Miami, Florida 33138.

23 **GENERAL ALLEGATIONS**

24 **A. The Bankruptcy Case**

25 9. On March 20, 2023 (the “Petition Date”), Debtor filed a voluntary
26 petition for relief under Chapter 11 of the Bankruptcy Code, commencing the
27 Bankruptcy Case.

28 10. After the Office of the United States Trustee (the “UST”) filed the

1 *Motion by United States Trustee to Dismiss or Convert Case Pursuant to 11 U.S.C. §*
2 *1112(b)* [Bankr. Docket No. 21] and creditors Debt Validation Fund II, LLC; MC
3 DVI Fund 1, LLC; and MC DVI Fund 2, LLC filed the *Motion by DVF and MC DVI*
4 *to Dismiss Chapter 11 Case Pursuant to 11 U.S.C. §§ 105, 305, 349, & 1112, or in*
5 *the Alternative Convert This Case to Chapter 7 or Appoint a Trustee* [Bankr. Docket
6 No. 44], the Court entered the *Order Directing United States Trustee to Appoint*
7 *Chapter 11 Trustee* [Bankr. Docket No. 58] on May 4, 2021, thereby granting the
8 UST's motion and directing the UST to appoint a Chapter 11 Trustee in the
9 Bankruptcy Case.

10 11. Pursuant to the *Acceptance of Appointment as Chapter 11 Trustee*
11 [Bankr. Docket No. 63], on May 8, 2023, the Trustee accepted his appointment as the
12 Chapter 11 Trustee in the Bankruptcy Case, and he continues to serve in this capacity
13 at this time. The Court approved the Trustee's appointment in its *Order Approving*
14 *the U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee* [Bankr.
15 Docket No. 65].

16 12. The Trustee was not appointed until after events of the case and,
17 therefore, bases these allegations on information and belief. *Soo Park v. Thompson*,
18 851 F.3d 910, 928 (9th Cir. 2017) ("The *Twombly* plausibility standard . . . does not
19 prevent a plaintiff from pleading facts alleged upon information and belief where the
20 facts are peculiarly within the possession and control of the defendant or where the
21 belief is based on factual information that makes the inference of culpability
22 plausible."); *Miller v. City of Los Angeles*, 2014 U.S. Dist. LEXIS 198871, 2014 WL
23 12610195, at *5 (C.D. Cal. Aug. 7, 2014) (recognizing that the plaintiff's "information
24 and belief" pleading was allowed and "necessary at times"); *see also Mireskandari v.*
25 *Daily Mail and General Trust PLC*, 2013 U.S. Dist. LEXIS 194437, 2013 WL
26 12129642, at *4 (C.D. Cal. July 31, 2013) ("The Federal Rules of Civil Procedure
27 allow parties to plead facts on 'information and belief' if the facts 'will likely have
28 evidentiary support after a reasonable opportunity for further investigation or

1 discovery.'" (citations omitted)).

2 13. Plaintiff brings this action solely in his capacity as the Chapter 11 Trustee
3 for the benefit of Debtor's Estate and its creditors.

4 **B. LPG**

5 14. LPG operated a law firm for consumers across the country who sought
6 assistance in contesting or resolving debts they would identify.

7 15. The consumers would pay LPG over a period of time via monthly debits
8 from their bank accounts.

9 16. The monthly payments were meant to cover all legal services LPG
10 provided to the consumers including validation of the debts, review of documents to
11 determine enforceability, and court appearances to halt lawsuits to obtain judgments.

12 17. In certain instances, LPG would file a lawsuit in an effort to eliminate a
13 disputed debt or to prosecute affirmative claims held by the consumers.

14 18. Pursuant to applicable legal and ethical rules, the monthly payments
15 made by the consumers to LPG should have been held in trust until LPG incurred
16 costs related to the consumer's file or otherwise earned the fee pursuant to applicable
17 law.

18 19. LPG did not place consumers' monthly payments in trust.

19 20. In addition, in order to continue to obtain consumers to represent, LPG
20 contracted with marketing companies, who engaged in illegal capping, to refer
21 customers to LPG.

22 21. The marketing affiliate marketed in a manner to capture the potential
23 consumer and refer same to LPG.

24 22. The marketing affiliate went so far as to assist with the execution of an
25 engagement letter between the consumer and LPG.

26 23. In exchange for the consumers, LPG agreed to pay the marketing
27 affiliates a percentage the monthly payments made by the consumers to LPG.

28 ///

1 24. In addition, because LPG received payments from consumers over time,
2 it often sought financing by borrowing against its future cash flow. This borrowing
3 was not only used to finance operations at LPG, but also to pay the fees owed to the
4 marketing companies for providing the client referrals.

5 25. Many of the documents executed in connection with this financing
6 describe the transactions as account receivable purchase agreements.

7 **C. Defendant**

8 26. Defendant was one of the marketing affiliates Debtor entered into an
9 affiliate agreement.

10 27. Debtor paid Defendant a portion of the monthly payments received from
11 consumers referred by Defendant to Debtor.

12 28. Defendant is also one of the parties Debtor entered into an accounts
13 receivable purchase agreements. Pursuant to these agreements, Debtor sold a portion
14 of the income stream from the monthly payments received to Defendant.

15 **i. Affiliate Agreement**

16 29. On or about August 17, 2022, Debtor entered into an affiliate agreement
17 with Defendant (the “Affiliate Agreement”). A true and accurate copy of the Affiliate
18 Agreement is attached as **Exhibit A.**

19 30. The Affiliate Agreement provides Defendant “owns and operates a
20 system of generating leads consisting of consumers interested in the legal services
21 offered by LPG.” *See* **Ex. A.**

22 31. Pursuant to the Affiliate Agreement, Defendant generated leads
23 consisting of consumers interested in the legal services offered by LPG and referred
24 those consumers to Debtor. *See* **Ex. A.**

25 32. Defendant went so far as to assist with the execution of an engagement
26 letter with the consumer. *See* **Ex. A.**

27 33. Pursuant to the Affiliate Agreement, Debtor agreed to pay Defendant as
28 follows:

1 LPG shall pay 65% per file for each file that Affiliate places with
2 LPG, not counting the monthly maintenance fee of \$96.38, which
3 LPG shall retain to cover administrative costs for each file. LPG
4 shall calculate the amount of each file, apply the above-identified
5 percentage fee, and remit the same to Affiliate pursuant to an
6 agreed-upon schedule not to exceed one remittance per seven (7)
7 calendar days. If any consumer cancels LPG's services, or
demands a refund for payment for such services, or both, then
LPG shall be solely responsible [sic] for such cost and Affiliate
shall not have to share such expenses.

8 *See* **Ex. A.**

9 34. The Affiliate Agreement violates Sections 6151 and 6155 of the
10 California Business and Professional Code, which prohibit referrals of potential
11 clients to attorneys unless registered with the State Bar of California. CAL. BUS. &
12 PROF. CODE § 6155. "Referral activity" includes "any entity 'which, in person,
13 electronically, or otherwise, refers the consumer to an attorney or law firm not
14 identified' in the advertising." *Jackson v. LegalMatch.com*, 42 Cal. App. 5th 760, 775
15 (2019). A referral includes receiving information from potential clients and sending
16 that information to lawyers, even when the advertiser does not advertise the name of
17 the attorneys and the clients do not clear the name of the potential attorney after the
18 referral occurred. *Id.*

19 35. Further, if any effect of an agreement is to accomplish an unlawful
20 purpose, the agreement may be declared illegal regardless of the intention of the
21 parties. *Stockton Morris Plan Co. v. Cal. Tractor & Equip. Corp.*, 112 Cal. App. 2d
22 684, 690 (1952) (citing *Fewel & Dawes, Inc. v. Pratt*, 17 Cal. 2d 85, 91 (1941)). This
23 remains true regardless of whether the contract has been performed. *Stevens v. Boyes*
24 *Hot Springs Co.*, 113 Cal. App. 479 (1931) (A contract by a corporation to purchase
25 its own stock has the effect of illegally withdrawing and paying to a stockholder a
26 part of the capital stock of the corporation and is illegal and void, regardless of the
27 fact that the contract is fully performed by the sellers and partially performed by the
28 corporation.); *Mansfield v. Hyde*, 112 Cal. App. 2d 133 (1952), overruled, *Fomco*,

1 *Inc. v. Joe Maggio, Inc.*, 8 Cal. Rptr. 459 (1960) (Where object of statute requiring
2 licenses is to prevent improper persons from engaging in particular activity, or is for
3 purpose of regulating occupation or business for protection of public, imposition of
4 penalty amounts to prohibition against engaging in occupation or business without
5 license, and contract made by unlicensed person in violation of statute is
6 invalid.); *Firpo v. Murphy*, 72 Cal. App. 249 (1925) (A contract to pay commissions
7 to a real estate broker is illegal and he is not entitled to recover thereon where he fails
8 to secure the license required by law to carry on his business.).

9 36. Because the Affiliate Agreements violates California law, it is not
10 supported by valid consideration.

11 37. Unlawful consideration is that which is “(1) contrary to an express
12 provision of law; (2) contrary to the policy of express law, though not expressly
13 prohibited; or (3) otherwise contrary to good morals.” Cal. Civ. Code § 1667. “If any
14 part of a single consideration for one or more objects, or of several considerations for
15 a single object, is unlawful, the entire contract is void.” Cal. Civ. Code § 1608.

16 **ii. Account Receivable Purchase Agreements and Asset Purchase**
17 **Agreement**

18 38. On or about August 31, 2022, Defendant entered into an Account
19 Receivable Purchase Agreement with OHP-LPG, LP (“ARPA 1”). A true and
20 accurate copy of ARPA 1 is attached as **Exhibit B.**

21 39. On or about September 14, 2022, Defendant entered into an Account
22 Receivable Purchase Agreement with PurchaseCo80, LLC (“ARPA 2”). A true and
23 accurate copy of ARPA 2 is attached as **Exhibit C.**

24 40. On or about September 22, 2022, Defendant entered into an Asset
25 Purchase Agreement with PurchaseCo80, LLC (“APA”). A true and accurate copy of
26 APA is attached as **Exhibit D.**

27 41. On or about October 6, 2022, Defendant entered into an Account
28 Receivable Purchase Agreement with Marich Bein LLC (“ARPA 3”). A true and

1 accurate copy of ARPA 3 is attached as **Exhibit E.**

2 42. On or about November 7, 2022, Defendant entered into an Account
3 Receivable Purchase Agreement with Debtor (“ARPA 4”). A true and accurate copy
4 of ARPA 4 is attached as **Exhibit F.**

5 43. On or about November 17, 2022, Defendant entered into an Account
6 Receivable Purchase Agreement with Debtor (“ARPA 5”). A true and accurate copy
7 of ARPA 5 is attached as **Exhibit G.**

8 44. On or about January 6, 2023, Defendant entered into an Account
9 Receivable Purchase Agreement with Debtor (“ARPA 6”). A true and accurate copy
10 of ARPA 6 is attached as **Exhibit H.**

11 45. On or about January 6, 2023, Defendant entered into a second Account
12 Receivable Purchase Agreement with ProofPositive LLC (“ARPA 7”). A true and
13 accurate copy of ARPA 7 is attached as **Exhibit I.**

14 46. On or about February 28, 2023, Defendant entered into an Account
15 Receivable Purchase Agreement with Debtor (“ARPA 8”). A true and accurate copy
16 of ARPA 8 is attached as **Exhibit J.**

17 47. ARPA 1, ARPA 2, APA, ARPA 3, ARPA 4, ARPA 5, ARPA 6, ARPA
18 7, and ARPA 8 are referred to collectively hereinafter as the “ARPA Agreements.”

19 48. Pursuant to the ARPA Agreements, Defendant sold Debtor the stream of
20 monthly payments from consumers that were supposed to be held in trust until earned.

21 49. By entering into the ARPA Agreements, Debtor and Defendant violated
22 California law by selling unearned legal fees or funds there were supposed to be used
23 for the benefit of consumers.

24 50. The effect of the ARPA Agreements was to accomplish an unlawful
25 purpose, the agreement may be declared illegal regardless of the intention of the
26 parties. *Stockton Morris Plan Co. v. Cal. Tractor & Equip. Corp.*, 112 Cal. App. 2d
27 684, 690 (1952) (citing *Fewel & Dawes, Inc. v. Pratt*, 17 Cal. 2d 85, 91 (1941)). This
28 remains true regardless of whether the contract has been performed. *Stevens v. Boyes*

1 *Hot Springs Co.*, 113 Cal. App. 479 (1931) (A contract by a corporation to purchase
2 its own stock has the effect of illegally withdrawing and paying to a stockholder a
3 part of the capital stock of the corporation and is illegal and void, regardless of the
4 fact that the contract is fully performed by the sellers and partially performed by the
5 corporation.); *Mansfield v. Hyde*, 112 Cal. App. 2d 133 (1952), overruled, *Fomco,*
6 *Inc. v. Joe Maggio, Inc.*, 8 Cal. Rptr. 459 (1960) (Where object of statute requiring
7 licenses is to prevent improper persons from engaging in particular activity, or is for
8 purpose of regulating occupation or business for protection of public, imposition of
9 penalty amounts to prohibition against engaging in occupation or business without
10 license, and contract made by unlicensed person in violation of statute is
11 invalid.); *Firpo v. Murphy*, 72 Cal. App. 249 (1925) (A contract to pay commissions
12 to a real estate broker is illegal and he is not entitled to recover thereon where he fails
13 to secure the license required by law to carry on his business.).

14 51. Because the ARPA Agreements violates California law, it is not
15 supported by valid consideration.

16 52. Unlawful consideration is that which is “(1) contrary to an express
17 provision of law; (2) contrary to the policy of express law, though not expressly
18 prohibited; or (3) otherwise contrary to good morals.” Cal. Civ. Code § 1667. “If any
19 part of a single consideration for one or more objects, or of several considerations for
20 a single object, is unlawful, the entire contract is void.” Cal. Civ. Code § 1608.

21 **iii. Preference Letter**

22 53. On or about September 15, 2023, Trustee sent a preference letter to
23 Defendant (the “Preference Letter”). A true and accurate copy of the Preference Letter
24 is attached as **Exhibit K.**

25 54. The Preference Letter discussed certain transfers from Debtor that were
26 made to Defendant within the 90-day period prior to the Petition Date. The transfers
27 were listed on the attached Preference Transfer Schedule showing the date and
28 amount, according to Debtor’s books and records, of each transfer or other payment

1 (“Preference Transfer Schedule”). Trustee requested payment of the total amount due
2 under the Preference Transfer Schedule that amounted to \$236,541.14, in exchange
3 for a waiver and release from all claims that could be asserted by Trustee against
4 Defendant pursuant to 11 U.S.C. §§ 547 and 550.

5 55. Based on the information available to Trustee and considering the nature
6 of the relationship between Debtor and Defendant, no potential defenses were
7 identified that could reduce Defendant’s liability for the preference payments.
8 Consequently, Defendant was requested to provide any facts and valid defenses that
9 could substantiate its position and potentially mitigate or prevent some or all of the
10 transfers made by Debtor.

11 56. On or about October 25, 2023, Defendant responded to the Preference
12 Letter (“Response Letter”). A true and accurate copy of the Response Letter is
13 attached as **Exhibit L**.

14 57. The Response Letter discussed Defendant’s winding down of its
15 business since approximately March of 2023. Defendant stated that at the time LPG
16 went into bankruptcy, LPG still owed it about one million dollars in overdue fees for
17 services it provided to LPG. Defendant forgo submitting a claim for the amount owed
18 so it could move forward with winding down.

19 58. Defendant claimed it only had approximately \$16,000 in cash and no
20 other assets of value. Defendant attached a copy of its bank account demonstrating
21 such claim.

22 59. Due to its limited resources, Defendant stated it could not provide a
23 meaningful settlement. Defendant’s owners proposed a settlement amount that was
24 substantially less than the \$236,541.14 specified in the Preference Transfer Schedule.
25 The proposed settlement was intended to address and resolve all claims against
26 Defendant, accompanied by a comprehensive general release for both Defendant and
27 its owners.

28 ///

60. Trustee did not agree to such settlement terms, and has yet to receive any payment from Defendant pursuant to the Preference Letter.

D. Payments to Defendant

61. From September 2022 to February 2023, Debtor paid Defendant the sum of at least \$806,246.58, subject to proof at trial (the “Transfers”). A true and accurate list of the payments made by Debtor to Defendant is attached as **Exhibit M.**

62. \$236,541.14 of the Transfers from Debtor to Defendant occurred during the 90-day preference period (the “Preference Transfers”). A true and accurate list of the payments made during the Preference Transfers is attached as **Exhibit N.**

E. LPG’s Prepetition Creditors

63. On Debtor’s Schedule D [Bankr. Docket No. 33], Debtor listed three secured creditors—(a) Diverse Capital, LLC with a claim in the amount of \$1,224,810, (b) City Capital NY with a claim in the amount of \$2,950,000, and (c) Fundura Capital Group with a claim in the amount of \$2,100,000 (together, the “Secured Creditors”)—with secured claims totaling \$6,274,810.

64. In addition, on Debtor’s Schedule E/F [Bankr. Docket No. 33], Debtor scheduled 11 unsecured creditors with priority unsecured claims totaling \$374,060.04. These priority unsecured creditors include Indiana Dept. of Revenue, Dept. of Labor and Industries, Arizona Dept. of Economic Security, Arkansas Dept. of Finance & Admin., California Franchise Tax Board, Georgia Dept. of Labor, Internal Revenue Service, Mississippi Dept. of Revenue, Nevada Dept. of Taxation, Utah State Tax Commission, and Wisconsin Dept. of Revenue (collectively, the “Priority Unsecured Creditors”).

65. Another group of creditors that Debtor listed on its Schedule E/F [Bankr. Docket No. 33] are nonpriority unsecured creditors. Those 58 creditors have scheduled claims totaling \$141,439,158.05 and include Ajilon; Anthem Blue Cross; Azevedo Solutions Groups, Inc.; Carolina Technologies & Consulting Invoice; Collaboration Advisors; Credit Reporting Service Inc.; CT Corporation – Inv.; Debt

1 Pay Pro; Document Fulfillment Services; EnergyCare, LLC; Exela Enterprise
2 Solutions; First Legal Network, LLC; GHA Technologies Inc.; Harrington Electric,
3 Inc.; Imagine Reporting; Juize, Inc.; Krisp Technologies, Inc.; Liberty Mutual; Marc
4 Lemauiel – Allegra; MarkSYS Holdings, LLC; Netsuite-Oracle; Pitney Bowes;
5 Rapid Credit, Inc.; SBS Leasing A Program of De Lage Landen; Security Solutions;
6 Sharp Business Systems; Streamline Performance, Inc.; Thomson Reuters; Twilio,
7 Inc.; Nationwide Appearance Attorneys; Executive Center, LLC; Outsource
8 Accelerator, Ltd.; TaskUs Holdings, Inc.; Marich Bein, LLC; Validation Partners;
9 MC DVI Fund 1, LLC; MC DVI Fund 2, LLC; Debt Validation Fund II, LLC; Tustin
10 Executive Center; LexisNexus; JP Morgan Chase; Business Centers of America;
11 Michael Schwartz; Anibal Colon Jr.; Kathleen Lacey; David Ulery; Kimberly
12 Birdsong; Kevin Carpenter; Karen Suell; Gloria Eaton; Carolyn Beech; Debra Price;
13 Kenneth Topp; Darcey Williamson, Trustee; James Hammett; Johnny Rizo; Beverly
14 Graham; Kathleen Scarlett; and Geneve and Myranda Sheffield (collectively, the
15 “Nonpriority Unsecured Creditors” and, together with the Secured Creditors and
16 Priority Unsecured Creditors, the “Prepetition Creditors”).

17 **FIRST CLAIM FOR RELIEF**

18 **Count I - Avoidance, Recovery, and Preservation of Actual Fraudulent**
19 **Transfers**

20 **[11 U.S.C. §§ 548(a)(1)(A), 550, and 551]**

21 66. Plaintiff realleges and incorporates herein by reference each and every
22 allegation contained in paragraphs 1 through 65 as though set forth in full.

23 67. All or a portion of the Transfers occurred within the two years prior to
24 the Petition Date.

25 68. On or after the date that such Transfers were made, entities to which
26 Debtor was or became indebted include the Prepetition Creditors.

27 69. The Transfers happened while Debtor was insolvent or rendered Debtor
28 insolvent.

1 70. Despite Debtor's obligation to the Prepetition Creditors, Debtor
2 continued to pay Defendant sums received from consumers under the Affiliate
3 Agreement, which constitutes an illegal capping agreement between Defendant and
4 Debtor, in order to continue to receive additional consumer referrals.

5 71. Despite Debtor's obligation to the Prepetition Creditors, Debtor
6 continued to sell its accounts receivable to Defendant, which is illegal under
7 California law.

8 72. The Transfers were made with actual intent to hinder, delay, or defraud
9 creditors of Debtor.

10 73. The Transfers should be avoided as fraudulent under 11 U.S.C.
11 § 548(a)(1)(A), and such property, or the value thereof, should be recovered and
12 preserved for the benefit of the Estate pursuant to 11 U.S.C. §§ 550 and 551.

13 **SECOND CLAIM FOR RELIEF**

14 **Avoidance, Recovery, and Preservation of Constructive Fraudulent Transfers**
15 **Against Defendant**

16 **[11 U.S.C. §§ 548(a)(1)(B), 550, and 551]**

17 74. The Plaintiff realleges and incorporates herein by reference each and
18 every allegation contained in paragraphs 1 through 74 as though set forth in full.

19 75. All or a portion of the Transfers occurred within the two years prior to
20 the Petition Date.

21 76. On or after the date that such Transfers were made, entities to which
22 Debtor was or became indebted include the Prepetition Creditors.

23 77. The Transfers happened while Debtor

- 24 a. was insolvent or became insolvent as a result thereof;
- 25 b. was engaged or was about to engage in a transaction for which any
- 26 property remaining with Debtor was of unreasonably small capital;
- 27 or
- 28 c. intended to incur, or believed that it would incur, debts beyond its

1 ability to pay as such debts matured.

2 78. Because the referrals from Defendant to Debtor are illegal under
3 California law, they are void and constitute unlawful consideration, which cannot
4 constitute reasonably equivalent value. Thus, at the time of the Transfers, Debtor
5 received less than reasonably equivalent value in exchange for the Transfers.

6 79. Because the sale of the accounts receivable from Debtor to Defendant
7 are illegal under California law, they are void and constitute unlawful consideration,
8 which cannot constitute reasonably equivalent value. Thus, at the time of the
9 Transfers, Debtor received less than reasonably equivalent value in exchange for the
10 Transfers.

11 80. The Transfers should be avoided as fraudulent under 11 U.S.C.
12 § 548(a)(1)(B), and such property, or the value thereof, should be recovered and
13 preserved for the benefit of the Estate pursuant to 11 U.S.C. §§ 550 and 551.

14 **THIRD CLAIM FOR RELIEF**

15 **Avoidance, Recovery, and Preservation of Actual Fraudulent Transfers**
16 **Against Defendant**

17 **[11 U.S.C. §§ 544(b), 550, and 551; CAL. CIV. CODE §§ 3439.04(a) and 3439.07]**

18 81. Plaintiff realleges and incorporates herein by reference each and every
19 allegation contained in paragraphs 1 through 81 as though set forth in full.

20 82. All or a portion of the Transfers occurred within the four years prior to
21 the Petition Date.

22 83. On or after the date that such Transfers were made, entities to which
23 Debtor was or became indebted include the Prepetition Creditors.

24 84. Despite Debtor's obligation to the Prepetition Creditors, Debtor
25 continued to pay Defendant sums received from consumers under the Affiliate
26 Agreement, which constitutes an illegal capping agreement between Defendant and
27 Debtor.

28 85. Because the referrals from Defendant to Debtor are illegal under

1 California law, they are void and constitute unlawful consideration, which cannot
2 constitute reasonably equivalent value. Thus, at the time of the Transfers, Debtor
3 received less than reasonably equivalent value in exchange for the Transfers.

4 86. Despite Debtor's obligation to the Prepetition Creditors, Debtor
5 continued to sell its accounts receivable to Defendant, which is illegal under
6 California law. Because they are illegal under California law, they are void and
7 subject to avoidance as fraudulent.

8 87. The Transfers were made with actual intent to hinder, delay, or defraud
9 creditors of Debtor.

10 88. At all relevant times, the Transfers of Debtor's funds are avoidable as
11 fraudulent pursuant to 11 U.S.C. § 544(b) and CAL. CIV. CODE §§ 3439.04(a) and
12 3439.07 by one or more creditors who held and hold unsecured claims against Debtor
13 that were and are allowable against his Estate under 11 U.S.C. § 502 or that were not
14 and are not allowable only under 11 U.S.C. § 502(e), including, without limitation,
15 the Prepetition Creditors.

16 89. Accordingly, the Transfers should be avoided as fraudulent under 11
17 U.S.C. §§ 544(b) and CAL. CIV. CODE §§ 3439.04(a) and 3439.07, and such property,
18 or the value thereof, should be recovered and preserved for the benefit of the Estate
19 pursuant to 11 U.S.C. §§ 550 and 551 and CAL. CIV. CODE § 3439.07.

20 **FOURTH CLAIM FOR RELIEF**

21 **Avoidance, Recovery, and Preservation of Constructive Fraudulent Transfers**
22 **Against Defendant**

23 **[11 U.S.C. §§ 544(b), 550, and 551; CAL. CIV. CODE §§ 3439.05, and 3439.07]**

24 90. The Plaintiff realleges and incorporates herein by reference each and
25 every allegation contained in paragraphs 1 through 89 as though set forth in full.

26 91. All or a portion of the Transfers occurred within the four years prior to
27 the Petition Date.

28 92. The Transfers happened while Debtor

- 1 a. was insolvent or became insolvent was a result thereof;
- 2 b. was engaged or was about to engage in a transaction for which any
- 3 property remaining with Debtor was of unreasonably small capital;
- 4 or
- 5 c. intended to incur, or believed that it would incur, debts beyond its
- 6 ability to pay as such debts matured.

7 93. Because the referrals from Defendant to Debtor are illegal under
8 California law, they are void and constitute unlawful consideration, which cannot
9 constitute reasonably equivalent value. Thus, at the time of the Transfers, Debtor
10 received less than reasonably equivalent value in exchange for the Transfers.

11 94. Because the sale of the accounts receivable from Debtor to Defendant
12 are illegal under California law, they are void and constitute unlawful consideration,
13 which cannot constitute reasonably equivalent value. Thus, at the time of the
14 Transfers, Debtor received less than reasonably equivalent value in exchange for the
15 Transfers.

16 95. At all relevant times, the Transfers of Debtor's trust funds are avoidable
17 as fraudulent pursuant to 11 U.S.C. § 544(b) and CAL. CIV. CODE §§ 3439.05 and
18 3439.07 by one or more creditors who held and hold unsecured claims against Debtor
19 that were and are allowable against his Estate under 11 U.S.C. § 502 or that were not
20 and are not allowable only under 11 U.S.C. § 502(e), including, without limitation,
21 the Prepetition Creditors.

22 96. Accordingly, the Transfers should be avoided as fraudulent under 11
23 U.S.C. §§ 544(b) and CAL. CIV. CODE §§ 3439.05 and 3439.07, and such property, or
24 the value thereof, should be recovered and preserved for the benefit of the Estate
25 pursuant to 11 U.S.C. §§ 550 and 551 and CAL. CIV. CODE § 3439.07.

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FIFTH CLAIM FOR RELIEF

**Avoidance, Recovery, and Preservation of Preferential Transfer to Defendant
in Preference Period**

[11 U.S.C. §§ 547, 550, and 551]

97. The Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 96 as though set forth in full.

98. The Preference Transfers were made for, or on account of, an antecedent debt or debts owed by the LPG to Defendant, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendant.

99. The Preference Transfers happened while LPG was insolvent.

100. Debtor is also entitled to the presumption of insolvency when the Preference Transfers happened pursuant to 11 U.S.C. § 547(f).

101. As a result of the Preference Transfers, Defendant would be entitled to recover more than it would have received if: (i) the Debtor’s case was under chapter 7 of the Bankruptcy Code; (ii) the Preference Transfers had not been made; and (iii) Defendant received payments of its debts under the provisions of the Bankruptcy Code. As evidenced by the Debtor’s schedules filed in the underlying Bankruptcy Case, as well as the proofs of claim that have been received to date, the Debtor’s liabilities exceed its assets to the point that unsecured creditors will not receive a full payout of their claims from the Debtor’s bankruptcy estate.

102. In accordance with the foregoing, the Preference Transfers of the Statement is avoidable pursuant to 11 U.S.C. § 547(b), and may be recovered and preserved for the benefit of the estate pursuant to 11 U.S.C. §§ 550 and 551.

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SIXTH CLAIM FOR RELIEF

Turnover of Estate Property Against Defendant

[11 U.S.C. § 542]

103. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 102 as though set forth in full.

104. Defendant has possession or control over property of the Estate.

105. The Transfers are not of inconsequential value to the Estate.

106. The funds that are the subject of the Transfers are paramount to Debtor's ability to pay creditors.

107. Accordingly, the Trustee is entitled to a judgment for turnover of the trust funds pursuant to 11 U.S.C. § 542.

RESERVATION OF RIGHTS

108. Plaintiff reserves the right to bring all other claims or causes of action that Plaintiff may have against Defendant, on any and all grounds, as allowed under the law or in equity, including but not limited to, those claims not known by the Trustee at this time but that he may discover during the pendency of this adversary proceeding.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment as follows:

On The First, Second, Third, and Fourth Claims for Relief:

1. Avoiding, recovering, and preserving the Transfers against Defendant;

On the Fifth Claim for Relief:

2. Avoiding, recovering, and preserving the Transfers against Defendant;

On the Sixth Claim for Relief:

3. Ordering Defendant to immediately turn over the Transfers;

On All Claims for Relief:

4. Awarding costs of suit incurred herein; and

5. Granting any other and further relief as the Court deems just and proper.

Dated: February 6, 2024

Respectfully submitted,

DINSMORE & SHOHL LLP

By: /s/ Vanessa E. Rodriguez

Yosina M. Lissebeck

Vanessa E. Rodriguez

Special Counsel to Richard A.

Marshack, Chapter 11 Trustee